

ADMINISTRATIVE APPEAL OF

RUTH PINTO LEWIS

v.

SUPERINTENDENT OF THE EASTERN NAVAJO AGENCY

IBIA 76-12-A

Decided October 3, 1975

Appeal from a decision refusing to declare and include certain lands as trust assets subject to the Department's probate jurisdiction.

Docketed and Affirmed.

1. Patents of Public Lands: Effect

Remedy for errors of law, as well as for mistakes of fact, in the issue of a patent to land within the jurisdiction of the Department is a direct proceeding by a bill in equity to correct them.

APPEARANCES: Michael Celestre, Esq., for appellant, Ruth Pinto Lewis.

OPINION BY ADMINISTRATIVE JUDGE WILSON

This matter was referred to the Board of Indian Appeals for a decision by the Commissioner of Indian Affairs, pursuant to 43 CFR 4.354(b).

Ruth Pinto Lewis, appellant herein, had appealed to the Commissioner of Indian Affairs from a decision of an Area Director upholding the decision of the Superintendent of the Eastern Navajo Agency, refusing appellant's request that Stock-raising Homestead, hereinafter described, be added to the trust inventory of Ignacio Pinto, deceased Navajo Indian, Census No. 9355. The land in question described as Sec. 32, T. 19 N., R. 5 W., New Mexico Meridian, was conveyed to the decedent in fee by United States Government Patent No. 061457, issued on April 2, 1942.

It is the contention of the appellant that the property in question should be subject to a trust by virtue of the Act of July 4, 1884 (23 Stat. 96) as amended, 43 U.S.C. § 190 (1970) which provides:

Such Indians as may have been located on public lands, prior to July 4, 1884, or as may, under the direction of the Secretary of the Interior, or otherwise, thereafter, so locate may avail themselves of the provisions of the homestead laws as fully and to the same extent as may now be done by citizens of the United States. No fees or commissions shall be charged on account of said entries or proofs. All patents therefor shall be of the legal effect, and declare that the United States does and will hold the land thus entered for the period of twenty-five years, in trust for the sole use and benefit of the Indian by whom such entry shall have been made, or, in case of his decease, of his widow and heirs according to the laws of the State where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his widow and heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever.

It is the further contention of the appellant that the tract in question is trust property by virtue of 43 U.S.C. § 190, supra, notwithstanding the absence of language to that effect in the patent issued on April 2, 1942, and therefore should be included as part of the decedent's trust assets subject to the Department's probate jurisdiction.

For the reason hereinafter set forth the Board can see no reason to consider and pass on the appellant's first contention.

We are not in agreement with appellant's latter contention. Upon issuance of the patent some 30 years ago on April 2, 1942, legal title to the land in question passed from the United States

to Ignacio Pinto, thereby removing the land from the jurisdiction of the Department. Accordingly, the Superintendent being without authority to declare and include the tract as a part of the decedent's trust assets or inventory, acted properly in refusing to do so. Any relief or remedy that the appellant may have in the matter lies with the courts.

[1] Remedy for errors of law, as well as for mistakes of fact, in the issue of a patent to land within the jurisdiction of the Department, is a direct proceeding by a bill in equity to correct them. King v. McAndrews et al., 111 F. 860 (8th Cir. 1901). Moreover, a patent issued by the Land Department is a judgment by that tribunal, and a conveyance of legal title to land to the patentee in execution of the judgment. U.S. v. Krause, 92 F. Supp. 756 (W.D. Louisiana, Lake Charles Division, 1950).

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2), as amended, June 12, 1975, the decision of the Area Director, dated July 21, 1975, sustaining the decision of January 13, 1975, of the Superintendent of the Eastern Navajo Agency in refusing to declare and include as part of the decedent's trust assets or inventory be, and the same is hereby AFFIRMED.

This decision is final for the Department.

Done at Arlington, Virginia.

Alexander H. Wilson
Administrative Judge

I concur:

Mitchell J. Sabagh
Administrative Judge